



RESOURCES AGENCY

AIR RESOURCES BOARD

*Executive Officer: James D. Boyd
Chairperson: Jananne Sharpless
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The California legislature created the Air Resources Board in 1967 to control air pollutant emissions and improve air quality throughout the state. The Board evolved from the merger of two former agencies, the Bureau of Air Sanitation within the Department of Health and the Motor Vehicle Pollution Control Board. The members of the Board have experience in chemistry, meteorology, physics, law, administration, engineering and related scientific fields.

The Board regulates both vehicular and stationary pollution sources. The primary responsibility for controlling emissions from nonvehicular sources rests with local air pollution control districts (California Health and Safety Code sections 39002 and 40000).

The Board develops rules and regulations for stationary sources to assist local air pollution control districts in their efforts to achieve and maintain air quality standards. The Board oversees their enforcement activities and provides them with technical and financial assistance.

The Board's staff numbers approximately 425 and is divided into seven divisions: Technical Services, Legal and Enforcement, Stationary Source Control, Planning, Vehicle Control, Research and Administrative Services.

MAJOR PROJECTS:

Proposed Amendments to ARB's In-Use Vehicle Recall Program Regulations. In 1982, the Board adopted regulations that require auto manufacturers to report emissions-related failures and to recall in-use motor vehicles or engines which have identifiable emissions-related component failures or do not comply with applicable emissions standards and test procedures. The regulations allow the ARB to test properly maintained in-use vehicles to determine whether they comply with emissions standards. Once a condition of noncompliance is identified in a substantial number of vehicles

or engines, manufacturers have the option to voluntarily recall the affected vehicles or engines. If a manufacturer is unwilling to implement a voluntary recall, the ARB may order the manufacturer to recall the noncomplying vehicles.

According to ARB, the current recall program lacks an efficient mechanism for the early detection and repair of emissions components in the field. Many engine families with failed components, although known to the vehicle manufacturer, go unreported and unrepaired. Delays have also been encountered in implementing recalls due to the time spent by manufacturers and the ARB in discussing the validity of the noncompliance decision, the analysis of the failing test vehicles, and extensive delays by manufacturers to propose appropriate remedial action. Finally, over the past five years, the recall program has elicited a low response from owners of recalled vehicles ("capture rate"). At present, only 50% of the affected vehicles are repaired under the program.

During the summer, ARB staff proposed amendments to numerous ARB regulations to improve the in-use recall implementation process. The amendments would facilitate early identification of failing emissions-related components and ensure efficient initiation of recalls and timely completion of repairs, thereby improving the effectiveness and emissions reduction benefits of the recall program. In summary, the major amendments would accomplish the following:

- Classify recalls into three categories (voluntary, influenced, and ordered) to enable ARB to respond to various recall situations with appropriate approval procedures and implementation requirements for each category. This amendment would also require manufacturers, under an influenced or ordered recall situation, to compensate for the low capture rates either by increasing the effectiveness of recall repairs or increasing the number of vehicles captured for repair, possibly through incentives.

- Establish provisions necessary to support the eventual adoption and implementation of a recall enforcement

program by the Department of Motor Vehicles or another state agency which requires proof of correction of a recalled vehicle prior to receiving renewal of registration, a smog certificate, or other entitlement to use.

- Specify and require additional information to be included in the recall plan and in the owner notification letter.

- Clarify the minimum vehicle sample size for in-use enforcement testing to avoid lengthy discussions regarding the validity of test samples.

- Establish a tracking mechanism based upon emission warranty claim records to trigger the filing of a warranty information report with the ARB.

- Establish a new provision that triggers a recall of vehicles or engines on the basis of warranty claims information or other component failure data for failures resulting in excess emissions.

- Require the submission of an emissions-related component failure information report when a manufacturer does not believe a voluntary or influenced recall is warranted; and specify the information required in the emissions-related failure report.

- Make the recall procedures applicable to imported federal vehicles.

- Provide authority for the Executive Officer to waive some requirements, as appropriate.

On September 8, the ARB held a public hearing on the proposed amendments. At that time, staff proposed several revisions to the proposed language, including a phase-in of the failure-based recall program. The ARB will continue to discuss the recall program regulations at future meetings.

Amendment to Agricultural Burning Regulations for the South Central Coast Air Basin. The amendment to section 80210, Title 17 of the California Code of Regulations (CCR), adopted by the ARB on May 12, was approved by the Office of Administrative Law (OAL) on July 20. The amendment concerns criteria for permissive-burn days for the South Central Coast Air Basin. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 103 for background information.)

Ethylene Oxide as a Toxic Air Contaminant. The proposed regulatory amendment to section 93000, Titles 17 and 26 of the CCR, which identifies ethylene oxide as a toxic air contaminant (TAC), was approved by OAL on July 22. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 89 for background information.)

LEGISLATION:

AB 3343 (Tanner) was signed by the



Governor on September 9 (Chapter 778, Statutes of 1988). As amended on May 26, the bill requires the ARB to identify the relative contribution to total exposure to TACs from indoor concentrations, taking into account both ambient and indoor air environments.

AB 4392 (Brown, Tanner) was signed by the Governor on September 15 (Chapter 940, Statutes of 1988). As amended on August 8, this bill requires the ARB to hold a public hearing by June 30, 1989, to review the potential nature, extent, and severity of public exposure to TACs emitted by vehicular sources, and to hold a hearing by June 30, 1990, to consider a plan to reduce public exposure to vehicular TACs. In order to achieve the maximum possible reduction in public exposure to TACs, the ARB is required to consider the adoption of revisions in emissions standards for vehicular sources and regulations specifying the content of motor vehicle fuel, based on best available control technologies.

The following is a status update on bills described in detail in CRLR Vol. 8, No. 3 (Summer 1988) at pages 104-05:

SB 2285 (Presley) was signed by the Governor on August 31 (Chapter 741, Statutes of 1988). As amended, it makes provisions of the Brown Act applicable to special or emergency meetings of the South Coast Air Quality Management District. It will also increase the membership of the District's governing board.

SB 2646 (Presley), which would have required ARB to establish limits on the volatile organic compound content of coatings, solvents, and consumer products, died in the Assembly Natural Resources Committee.

SB 1016 (Keene), concerning regulation of benzene from retail service stations, died in the Senate Appropriations Committee.

SB 1274 (Senate Committee on Natural Resources and Wildlife) was vetoed on September 30. The bill would have required the ARB to evaluate and measure the effects on agriculture and forests of combined and cumulative exposure to acid deposition and photochemical oxidants.

SB 1997 (Presley) was signed by the Governor on September 29 (Chapter 1544, Statutes of 1988). This bill, which makes numerous changes to the Bureau of Automotive Repair's (BAR) Smog Check Program, was amended to retain BAR within the Department of Consumer Affairs, rather than abolishing it and creating a new Department of Vehicle Inspection and Repair under the

Resources Agency. (For details on this bill, *see supra* agency report on BAR.)

SB 2297 (Rosenthal) was signed on September 29 (Chapter 1546, Statutes of 1988). This bill requires the South Coast Air Quality Management District to establish and encourage the use of clean-burning fuels.

AB 1479 (Sher) was vetoed by the Governor on September 23. This bill would have required implementation of a statewide plan for monitoring environmental impacts of waste or fuel burning projects.

AB 2595 (Sher), the California Clean Air Act of 1988, was signed by the Governor on September 30 (Chapter 1568, Statutes of 1988). (See CRLR Vol. 8, No. 3 (Summer 1988) pp. 104-05 and Vol. 8, No. 2 (Spring 1988) pp. 98-99 for background information on this extensive bill.)

AB 2930 (Sher) was signed by the Governor on September 29 (Chapter 1518, Statutes of 1988). This bill creates the Atmospheric Acidity Protection Act of 1988, requiring the ARB to adopt and implement a program to determine damage to public health and to develop ways to protect public health from atmospheric acidity.

AB 514 (Clute), regarding tire burning in resource recovery projects in federal nonattainment areas, died in the Senate Committee on Natural Resources and Wildlife.

AB 2969 (Frizzelle), regarding standards for emissions of smoke from diesel pile-driving hammers, died in the Senate Rules Committee.

AB 3672 (Clute), regarding ARB to hold hearings to review the Air Pollution Emergency Plan for ozone, died in the Senate Appropriations Committee.

AB 3971 (Cortese) was signed by the Governor on September 30 (Chapter 1569, Statutes of 1988). This bill allows the San Francisco Bay Area Air Quality Management District to adopt, implement, and enforce transportation control measures for the attainment of air quality standards.

AB 4355 (Connelly) was signed by the Governor on September 29 (Chapter 1541, Statutes of 1988). This bill creates the Sacramento Metropolitan Air Quality Management District, which will assume the functions of the Sacramento County Air Pollution Control District on July 1, 1989.

AB 4663 (Hauser), which requires the ARB to publish maps classifying cities, counties, or portions thereof, on the basis of attainment or nonattainment of ambient air quality standards,

was signed by the Governor on September 22 (Chapter 1225, Statutes of 1988).

SB 1931 (Campbell) revises an exemption to ARB maximum standards for the volatility of gasoline. Under this bill, a blend of gasoline consisting of at least 10% ethyl alcohol, as defined, is exempt until October 1, 1993, from meeting the volatility standards if the gasoline used in the blend meets the volatility standards for gasoline. This bill was signed by the Governor on September 23 (Chapter 1262, Statutes of 1988).

LITIGATION:

In *Western Oil & Gas Ass'n (WOGA) v. Monterey Bay Unified Air Pollution Control District, et al.*, No. H003328, 88 D.A.R. 8807 (June 24, 1988), the Sixth District Court of Appeal held that the Tanner Act (Health and Safety Code sections 39650-39674), which creates a state level procedure for identifying and controlling toxic air contaminants (TACs), preempts a local regulation adopted by the defendant District which also created a procedure for identifying TACs. However, once a substance has been identified as a TAC under the state scheme, local air pollution control districts may immediately adopt regulations to control emissions of that substance, even though the state has not yet proposed model regulations concerning it.

The court emphasized that the Tanner Act establishes a two-part process. "In the first part of the process, the [ARB] identifies substances which are [TACs] through a detailed procedure. In the second part of the process, the [ARB] establishes minimum measures to control the emission of the [TACs] it has identified. The Tanner Act specifically provides that local air pollution control districts may adopt the control measures established by the [ARB] or, alternatively, the districts may adopt 'equally effective or more stringent control measures than the airborne toxic control measures adopted by the state board.'"

WOGA challenged the District's adoption of rule 1000 to control the emission of TACs, contending that the Tanner Act fully preempts the rule, and argued that the District may not adopt regulations concerning TACs until (1) a substance has been identified as such under the first phase of the Tanner Act procedure, and (2) the state has promulgated a model regulation concerning the substance pursuant to the second step of the Tanner Act.



REGULATORY AGENCY ACTION

The court agreed that the Tanner Act preempts a district's authority to identify a TAC; but once the ARB has adopted a regulation identifying a substance as a TAC, a district is free to regulate that substance by local regulation.

FUTURE MEETINGS:

To be announced.

CALIFORNIA WASTE MANAGEMENT BOARD

Executive Officer: George T. Eowan
Chairperson: John E. Gallagher
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Created by SB 5 in 1972, the California Waste Management Board (CWMB) formulates state policy regarding responsible solid waste management. Although the Board once had jurisdiction over both toxic and non-toxic waste, CWMB jurisdiction is now limited to non-toxic waste. Jurisdiction over toxic waste now resides primarily in the toxic unit of the Department of Health Services. CWMB considers and issues permits for landfill disposal sites and oversees the operation of all existing landfill disposal sites. Each county must prepare a solid waste management plan consistent with state policy.

Other statutory duties include conducting studies regarding new or improved methods of solid waste management, implementing public awareness programs, and rendering technical assistance to state and local agencies in planning and operating solid waste programs. The Board has also attempted to develop economically feasible projects for the recovery of energy and resources from garbage, encourage markets for recycled materials, and promote waste-to-energy (WTE) technology. Additionally, CWMB staff is responsible for inspecting solid waste facilities, e.g., landfills and transfer stations, and reporting its findings to the Board.

The Board consists of the following nine members who are appointed for staggered four-year terms: one county supervisor, one city councilperson, three public representatives, a civil engineer, two persons from the private sector, and a person with specialized education and experience in natural resources, conservation, and resource recovery. The Board is assisted by a staff of approximately 86 people.

Sherman F. Roodzant resigned as chair of CWMB effective June 30, 1988. Governor Deukmejian has named Board

member John E. Gallagher as Roodzant's replacement. As this writing, the Governor has not yet selected a person to fill Gallagher's position on the Board.

MAJOR PROJECTS:

Anti-Litter Campaign. CWMB has launched a drive against litter called "California Cleanin'", which is intended to increase public awareness of the state's growing litter problem and focus attention on related waste management issues such as recycling, landfill siting, and alternative disposal technologies. The campaign features television announcements reminding people not to litter and alerting the public to the state's new \$1,000 fine against littering. Radio announcements are aimed at the most common litterbugs—teenage boys and adult male truck drivers.

Regulatory Action. CWMB has proposed the repeal of three sets of regulations: (1) current rules which require used oil haulers, used oil transfer facility operators, and used oil recyclers to register with the Board (California Code of Regulations (CCR) Title 14, Division 7, Chapter 1, Article 2, commencing with section 18600)—the authority for these regulations was repealed in 1986; (2) the Board's "public meeting" rules (Division 7, Chapter 1, Article 2, Title 14 of the CCR), which are superseded by the state Open Meetings Act; and (3) the Board's public records rules (Division 7, Chapter 1, Article 4, Title 14 of the CCR), which are superseded by the state Public Records Act. The Board was scheduled to hold a September 22 hearing on these proposals.

On January 13, 1988, the Board adopted an amendment to section 17332, Title 14 of the CCR, to require that persons desiring to provide solid waste collection services be authorized by the local solid waste management enforcement agency. (See CRLR Vol. 8, No. 2 (Spring 1988) pp. 99-100 for background information.) This regulatory action was disapproved by the Office of Administrative Law (OAL) on July 29, because it failed to comply with the clarity standard.

Status of CoSWMPs. Each county must prepare a solid waste management plan (CoSWMP) consistent with state policy which is reviewed by the Board. Presently, 52 CoSWMPs are current and complete, and only 5 are delinquent. In June 1985 (a baseline date established for comparison), 31 were delinquent. The Sacramento CoSWMP revision was scheduled for consideration at the Board's October meeting, and the Con-

tra Costa, Humboldt, and Kern revisions have been referred to the state Attorney General for legal action.

Five-Year Permit Review Program. A review of all facility permits is required five years after issuance, modification, revision, or review. However, approximately 80% of all facility permits are overdue for review. Therefore, CWMB staff has implemented a program to bring delinquent permit reviews up to date. Currently, 160 landfills, 233 transfer stations, and 3 sumps are overdue for a permit review. The number of unreviewed permits indicates that a large number of facilities may be operating outside of permitted conditions.

LEGISLATION:

The following is a status update on bills discussed in CRLR Vol. 8, No. 3 (Summer 1988) at pages 106-08 and Vol. 8, No. 2 (Spring 1988) at pages 100-02:

AB 1028 (Katz) relates to the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), which prohibits any person in the course of doing business from knowingly discharging or releasing a chemical known to the state to cause cancer or reproductive toxicity into water, except as specified. Among other things, this bill would have included public agencies within the definition of "person". AB 1028 was vetoed by the Governor in September 30.

AB 2714 (Jones), which would have revised the definition of the term "significant amount" in Proposition 65, was dropped by its author.

SB 269 (Kopp) would have, subject to the approval of the electors, included public agencies, as defined, within the discharge and exposure prohibitions of Proposition 65, with specified exceptions. This bill was vetoed by the Governor.

AB 3012 (Katz) would have required CWMB, by July 1, 1990, to adopt regulations requiring that all new and expansions of existing waste management units which are used for the disposal of nonhazardous solid waste be equipped with landfill gas monitoring systems. At its September 15 meeting, CWMB voted to ask the Governor to veto the bill as a special-interest bill. CWMB is convinced that this bill is actually a bill sponsored by one landfill company to close down a landfill owned by another landfill company. AB 3012 was vetoed on September 30.

AB 3298 (Killea), which would have enacted the Killea-Cortese Solid Waste Recycling Act of 1988 and required each local agency to prepare, adopt, and im-